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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL SEPULVEDA; ANITA PEREZ;
ANTONIO PRANGNER, individually and
on behalf of all similarly situated
individuals,

Plaintiffs - Appellants,

v.

WAL-MART STORES INC.,

Defendant - Appellee.

No. 06-56090

D.C. No. CV-04-01003-DSF

MEMORANDUM *

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted March 6, 2008
Pasadena, California

Before: SCHROEDER, WARDLAW and TALLMAN, Circuit Judges.

Plaintiffs, current and former Assistant Managers of Defendant, Wal-Mart
Stores, Inc., appeal the district court's order denying their motion for class

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

certification. We have jurisdiction under 28 U.S.C. § 1292(e) and Federal Rule of Civil Procedure 23(f).

The district court misapplied Ninth Circuit precedent when, relying on its conclusion that Plaintiffs' claims for monetary relief were non-incidental, it denied class certification under Federal Rule of Civil Procedure 23(b)(2). *See Molski v. Gleich*, 318 F.3d 937, 949–50 (9th Cir. 2003) (refusing to adopt the incidental damages approach set forth by the Fifth Circuit in *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402 (5th Cir. 1998)). The district court must focus on the intent of the Plaintiffs in bringing suit. *Id.* at 950. We therefore hold that the district court abused its discretion in denying class certification. *See Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003) (en banc) (per curiam).

On remand the district court shall reconsider class certification under Federal Rule of Civil Procedure 23(b)(2), and, in the alternative, also reconsider using Rule 23(c)(4) to certify specific issues under the Rule 23(b)(2) standard. *See Society for Individual Rights, Inc. v. Hampton*, 528 F.2d 905, 906 (9th Cir. 1975). In reconsidering these issues, the district court may find the California Supreme Court's decision in *Gentry v. Superior Court*, 42 Cal. 4th 443, 457–59, 462, 464–65 (2007), instructive.

The district court did not abuse its discretion in denying class certification under Federal Rule of Civil Procedure 23(b)(3), and we therefore affirm that portion of its order. Each party shall bear its own costs on appeal.

REVERSED in part; AFFIRMED in part.